

REMARKS

STATUS OF THE CLAIMS

Claims 1, 2, 6 and 8 are pending in the application.

Claims 1, 2, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds (U.S. 5,742,499) in view of Furtney et al. (U.S. 5,579,509).

According to the foregoing, the claims are amended, and, thus, pending claims remain for reconsideration, which is respectfully requested. No new matter has been added.

The independent claims are 1, 2, and 6. Claim 1, as amended, recites measuring periodically a communication time of each of the communication modes of one of the communication devices for each communication device under a plurality of communication conditions comprising a version of an operating system corresponding to each of the communication devices. This feature of the amended claim is presented in the specification, particularly at lines 2-14 of page 25. Independent claims 2 and 6, as amended, recite somewhat similar features. In other words, a communication time of each of the communication modes of one of the communication devices for each communication device is measured periodically. The Applicants respectfully submit that this feature is not disclosed expressly or implicitly in either of the cited reference.

Reynolds' column 5, lines 11-46, which is relied upon by the Examiner, discusses selecting an optimal communications mode at operation run-time using hardware parameters and run-time parameters, but Reynolds is silent on any "measuring periodically a communication time," and is silent on any "communication condition ... a version of an operating system corresponding to each of the communication devices." And Furtney does not cure Reynolds' deficiency, because Furtney discusses verifying software module versions, but is silent on, and does not provide any evidence expressly or implicitly to one skilled in the art to be modified to provide the claimed communication mode selection based upon operating system version. A *prima facie* case of obviousness cannot be established based upon Reynolds and Furtney, because there is no evidence expressly or implicitly that one skilled in the art would combine Reynolds and Furtney and then modify Reynolds' automatic selection of an optimal communication mode based upon hardware parameters and run-time parameters and Furtney's verifying that two or more software modules are compatible via version identifiers, to provide the

claimed "measuring periodically a communication time of each of the communication modes of one of the communication devices for each communication device under a plurality of communication conditions comprising a version of an operating system corresponding to each of the communication devices."

The above comments are specifically directed to Claim 1. However, it is respectfully submitted that the comments would be helpful in understanding various differences of various other claims over the cited reference. Namely, claims 2 and 6 have the similar features as that of Claim 1, and it is firmly believed that Claims 2 and 6 can also be distinguished from the cited references.

Claim 8 is also patentable by inheriting patentable features from Claim 2, and also by reciting additional patentable features.

In view of the above, it is respectfully submitted that the rejection is overcome.

CONCLUSION

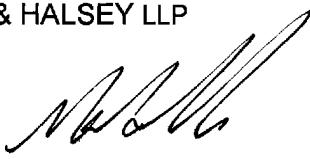
There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,
STAAS & HALSEY LLP

Date: March 31, 2008

By: 
Mehdi D. Sheikerz
Registration No. 41,307

1201 New York Avenue, N.W., 7th Floor
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501